

By: Rinaldi

H.B. No. 2289

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the eligibility for service retirement annuities from  
3 the Employees Retirement System of Texas or the Teacher Retirement  
4 System of Texas of certain employees convicted of certain offenses.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 42.01, Code of Criminal Procedure, is  
7 amended by adding Section 12 to read as follows:

8 Sec. 12. In addition to the information described by  
9 Section 1, the judgment should reflect affirmative findings entered  
10 pursuant to Article 42.0192.

11 SECTION 2. Chapter 42, Code of Criminal Procedure, is  
12 amended by adding Article 42.0192 to read as follows:

13 Art. 42.0192. FINDING REGARDING OFFENSE RELATED TO  
14 PERFORMANCE OF PUBLIC SERVICE. (a) In the trial of an offense  
15 described by Section 814.013 or 824.009, Government Code, the judge  
16 shall make an affirmative finding of fact and enter the affirmative  
17 finding in the judgment in the case if the judge determines that the  
18 offense committed was related to the defendant's employment  
19 described by Section 814.013(a) or Section 824.009(a), Government  
20 Code, while a member of the Employees Retirement System of Texas or  
21 the Teacher Retirement System of Texas.

22 (b) A judge that makes the affirmative finding described by  
23 this article shall make the determination and enter the order  
24 required by Section 814.013(k) or 824.009(k), Government Code, as

1 applicable.

2 SECTION 3. Subchapter A, Chapter 814, Government Code, is  
3 amended by adding Section 814.013 to read as follows:

4 Sec. 814.013. CERTAIN EMPLOYEES AND ANNUITANTS INELIGIBLE  
5 FOR RETIREMENT ANNUITY; RESUMPTION OR RESTORATION OF ELIGIBILITY.

6 (a) This section applies only to a person who is a member or an  
7 annuitant of the retirement system and is or was an employee of the  
8 Texas Juvenile Justice Department in one of that department's  
9 institutional schools who, as defined by rule of the board of  
10 trustees, has or had regular, direct contact with students.

11 (b) To the extent ordered by a court under Subsection (k), a  
12 person is not eligible to receive a full service retirement annuity  
13 from the retirement system if the person is finally convicted of an  
14 offense the victim of which is a student who is a minor and the  
15 offense:

16 (1) arises from the person's employment described by  
17 Subsection (a) while a member of the retirement system; and

18 (2) is punishable as a felony under the following  
19 sections of the Penal Code:

20 (A) Section 15.01 (criminal attempt), Section  
21 15.02 (criminal conspiracy), Section 15.03 (criminal  
22 solicitation), or Section 15.031 (criminal solicitation of a  
23 minor);

24 (B) Section 19.02 (murder), Section 19.03  
25 (capital murder), Section 19.04 (manslaughter), or Section 19.05  
26 (criminally negligent homicide);

27 (C) Section 20.02 (unlawful restraint);

- 1                    (D) Section 20.03 (kidnapping) or Section 20.04  
2 (aggravated kidnapping);  
3                    (E) Section 20.05 (smuggling of persons);  
4                    (F) Section 20A.02 (trafficking of persons);  
5                    (G) Section 21.02 (continuous sexual abuse of  
6 young child or children);  
7                    (H) Section 21.11 (indecent with a child);  
8                    (I) Section 21.12 (improper relationship between  
9 educator and student);  
10                   (J) Section 22.01 (assault);  
11                   (K) Section 22.011 (sexual assault) or Section  
12 22.021 (aggravated sexual assault);  
13                   (L) Section 22.04 (injury to a child, elderly  
14 individual, or disabled individual);  
15                   (M) Section 22.041 (abandoning or endangering  
16 child);  
17                   (N) Section 33.021 (online solicitation of a  
18 minor);  
19                   (O) Section 43.05 (compelling prostitution);  
20                   (P) Section 43.25 (sexual performance by a  
21 child); or  
22                   (Q) Section 43.251 (employment harmful to  
23 children).

24                   (c) To the extent ordered by a court under Subsection (k),  
25 the retirement system shall suspend making full annuity payments to  
26 a person who is not eligible to receive a full service retirement  
27 annuity under Subsection (b) on receipt by the retirement system of

1 notice and terms of the person's conviction.

2 (d) The retirement system shall resume making full annuity  
3 payments if the person made ineligible for a full annuity under  
4 Subsection (b):

5 (1) is subsequently found to be not guilty of the  
6 offense; or

7 (2) meets the requirements for innocence under Section  
8 103.001(a)(2), Civil Practice and Remedies Code.

9 (e) The retirement system as applicable shall:

10 (1) for a person whose full annuity payments are  
11 resumed under Subsection (d), reimburse the person for any portion  
12 of the annuity payments withheld during a period of suspension; or

13 (2) restore the full eligibility of a person convicted  
14 of an offense described by Subsection (b) to receive a service  
15 retirement annuity, including the restoration of all service  
16 credits accrued by the person before the conviction, if the person  
17 satisfies the condition under Subsection (d)(1) or (2).

18 (f) Except as provided by Subsection (g), a person convicted  
19 of an offense described by Subsection (b) whose eligibility for a  
20 service retirement annuity is not fully restored under Subsection  
21 (e)(2) is eligible to accrue service credit toward a service  
22 retirement annuity from the retirement system if the person:

23 (1) was placed on community supervision for the  
24 offense for which the person was convicted and:

25 (A) successfully completed the period of  
26 community supervision; and

27 (B) received a discharge and dismissal under

1 Article 42A.701, Code of Criminal Procedure; or

2 (2) was sentenced to serve a term of confinement in a  
3 penal institution for the offense for which the person was  
4 convicted and completely discharged the person's sentence,  
5 including any term of confinement and any period of parole or other  
6 form of conditional release.

7 (g) In determining a person's eligibility for retirement  
8 benefits under Subsection (f), the retirement system may include  
9 only those service credits that were:

10 (1) accrued by the person before the person's  
11 conviction for an offense described by Subsection (b) and remaining  
12 after conviction of the offense; or

13 (2) earned after fulfilling the requirements under  
14 Subsection (f).

15 (h) Except as provided by Subsection (i), a person who is  
16 not eligible to receive a full service retirement annuity under  
17 Subsection (b) is entitled to request and receive a refund of the  
18 person's retirement annuity contributions, not including any  
19 interest earned on those contributions. A person who accepts a  
20 refund under this subsection terminates the person's membership in  
21 the retirement system.

22 (i) Benefits payable to an alternate payee under Chapter  
23 804, including a spouse or dependent child, are not affected by a  
24 person's ineligibility to receive a full service retirement annuity  
25 under Subsection (b).

26 (j) The board of trustees shall adopt rules and procedures  
27 to implement this section.

1       (k) A court shall:

2               (1) determine and order as applicable for a person  
3 convicted of an offense described by Subsection (b) the amount by  
4 which the person's:

5                       (A) service retirement annuity payments are to be  
6 reduced; or

7                       (B) accrued service credits are to be reduced;  
8 and

9               (2) notify the retirement system of the terms of a  
10 conviction ordered under Subdivision (1).

11       SECTION 4. Subchapter A, Chapter 824, Government Code, is  
12 amended by adding Section 824.009 to read as follows:

13       Sec. 824.009. CERTAIN EMPLOYEES AND ANNUITANTS INELIGIBLE  
14 FOR RETIREMENT ANNUITY; RESUMPTION OR RESTORATION OF ELIGIBILITY.

15 (a) This section applies only to a person who is a member or an  
16 annuitant of the retirement system and is or was an employee who, as  
17 defined by rule of the board of trustees, has or had regular, direct  
18 contact with students.

19       (b) To the extent ordered by a court under Subsection (k), a  
20 person is not eligible to receive a full service retirement annuity  
21 from the retirement system if the person is finally convicted of an  
22 offense the victim of which is a student who is a minor and the  
23 offense:

24                       (1) arises from the person's employment described by  
25 Subsection (a) while a member of the retirement system; and

26                       (2) is punishable as a felony under the following  
27 sections of the Penal Code:

1                   (A) Section 15.01 (criminal attempt), Section  
2 15.02 (criminal conspiracy), Section 15.03 (criminal  
3 solicitation), or Section 15.031 (criminal solicitation of a  
4 minor);

5                   (B) Section 19.02 (murder), Section 19.03  
6 (capital murder), Section 19.04 (manslaughter), or Section 19.05  
7 (criminally negligent homicide);

8                   (C) Section 20.02 (unlawful restraint);

9                   (D) Section 20.03 (kidnapping) or Section 20.04  
10 (aggravated kidnapping);

11                   (E) Section 20.05 (smuggling of persons);

12                   (F) Section 20A.02 (trafficking of persons);

13                   (G) Section 21.02 (continuous sexual abuse of  
14 young child or children);

15                   (H) Section 21.11 (indecent with a child);

16                   (I) Section 21.12 (improper relationship between  
17 educator and student);

18                   (J) Section 22.01 (assault);

19                   (K) Section 22.011 (sexual assault) or Section  
20 22.021 (aggravated sexual assault);

21                   (L) Section 22.04 (injury to a child, elderly  
22 individual, or disabled individual);

23                   (M) Section 22.041 (abandoning or endangering  
24 child);

25                   (N) Section 33.021 (online solicitation of a  
26 minor);

27                   (O) Section 43.05 (compelling prostitution);

1                   (P) Section 43.25 (sexual performance by a  
2 child); or

3                   (Q) Section 43.251 (employment harmful to  
4 children).

5           (c) To the extent ordered by a court under Subsection (k),  
6 the retirement system shall suspend making full annuity payments to  
7 a person who is not eligible to receive a full service retirement  
8 annuity under Subsection (b) on receipt by the retirement system of  
9 notice and terms of the person's conviction.

10           (d) The retirement system shall resume making full annuity  
11 payments if the person made ineligible for a full annuity under  
12 Subsection (b):

13                   (1) is subsequently found to be not guilty of the  
14 offense; or

15                   (2) meets the requirements for innocence under Section  
16 103.001(a)(2), Civil Practice and Remedies Code.

17           (e) The retirement system as applicable shall:

18                   (1) for a person whose full annuity payments are  
19 resumed under Subsection (d), reimburse the person for any portion  
20 of the annuity payments withheld during a period of suspension; or

21                   (2) restore the full eligibility of a person convicted  
22 of an offense described by Subsection (b) to receive a service  
23 retirement annuity, including the restoration of all service  
24 credits accrued by the person before the conviction, if the person  
25 satisfies the condition under Subsection (d)(1) or (2).

26           (f) Except as provided by Subsection (g), a person convicted  
27 of an offense described by Subsection (b) whose eligibility for a



1 service retirement annuity is not fully restored under Subsection  
2 (e)(2) is eligible to accrue service credit toward a service  
3 retirement annuity from the retirement system if the person:

4 (1) was placed on community supervision for the  
5 offense for which the person was convicted and:

6 (A) successfully completed the period of  
7 community supervision; and

8 (B) received a discharge and dismissal under  
9 Article 42A.701, Code of Criminal Procedure; or

10 (2) was sentenced to serve a term of confinement in a  
11 penal institution for the offense for which the person was  
12 convicted and completely discharged the person's sentence,  
13 including any term of confinement and any period of parole or other  
14 form of conditional release.

15 (g) In determining a person's eligibility for retirement  
16 benefits under Subsection (f), the retirement system may include  
17 only those service credits that were:

18 (1) accrued by the person before the person's  
19 conviction for an offense described by Subsection (b) and remaining  
20 after conviction of the offense; or

21 (2) earned after fulfilling the requirements under  
22 Subsection (f).

23 (h) Except as provided by Subsection (i), a person who is  
24 not eligible to receive a full service retirement annuity under  
25 Subsection (b) is entitled to request and receive a refund of the  
26 person's retirement annuity contributions, not including any  
27 interest earned on those contributions. A person who accepts a

1 refund under this subsection terminates the person's membership in  
2 the retirement system.

3 (i) Benefits payable to an alternate payee under Chapter  
4 804, including a spouse or dependent child, are not affected by a  
5 person's ineligibility to receive a full service retirement annuity  
6 under Subsection (b).

7 (j) The board of trustees shall adopt rules and procedures  
8 to implement this section.

9 (k) A court shall:

10 (1) determine and order as applicable for a person  
11 convicted of an offense described by Subsection (b) the amount by  
12 which the person's:

13 (A) service retirement annuity payments are to be  
14 reduced; or

15 (B) accrued service credits are to be reduced;  
16 and

17 (2) notify the retirement system of the terms of a  
18 conviction ordered under Subdivision (1).

19 SECTION 5. Sections 814.013 and 824.009, Government Code,  
20 as added by this Act, apply only to an offense committed on or after  
21 the effective date of rules adopted in accordance with Section 7 of  
22 this Act. An offense committed before that date is governed by the  
23 law in effect on the date the offense was committed, and the former  
24 law is continued in effect for that purpose. For purposes of this  
25 section, an offense was committed before the effective date of  
26 rules adopted in accordance with Section 7 of this Act if any  
27 element of the offense occurred before that date.

1           SECTION 6. Section 12, Article 42.01, Code of Criminal  
2 Procedure, and Article 42.0192, Code of Criminal Procedure, as  
3 added by this Act, apply only to a judgment of conviction entered on  
4 or after the effective date of this Act.

5           SECTION 7. (a) Not later than December 31, 2017, for the  
6 purposes of Section 814.013(a), Government Code, as added by this  
7 Act, the board of trustees of the Employees Retirement System of  
8 Texas by rule shall define which employee positions at the  
9 institutional schools of the Texas Juvenile Justice Department  
10 include regular, direct contact with students.

11           (b) Not later than December 31, 2017, for the purposes of  
12 Section 824.009(a), Government Code, as added by this Act, the  
13 board of trustees of the Teacher Retirement System of Texas by rule  
14 shall define which employee positions include regular, direct  
15 contact with students.

16           SECTION 8. This Act takes effect September 1, 2017.